

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

HONEYWELL INTERNATIONAL INC.	)	
and HONEYWELL INTELLECTUAL	)	
PROPERTIES INC.,	)	
	)	
Plaintiffs,	)	C.A. No. 04-1338-KAJ
	)	(Consolidated)
v.	)	
	)	
APPLE COMPUTER, INC., et al.,	)	
	)	
Defendants and Counterclaimants.	)	

**PLAINTIFFS HONEYWELL INTERNATIONAL INC. AND  
HONEYWELL INTELLECTUAL PROPERTIES INC.'S  
MOTION FOR LEAVE TO FILE ITS SECOND AMENDED COMPLAINT**

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, plaintiffs Honeywell International Inc. and Honeywell Intellectual Properties Inc. (“Honeywell”) move for leave to file their Second Amended Complaint. Pursuant to D. Del. LR 15.1, attached as Exhibit A are two copies of the proposed Second Amended Complaint. Attached as Exhibit B is a redlined version comparing the First Amended Complaint to the proposed Second Amended Complaint.

Honeywell seeks to amend its First Amended Complaint (D.I. 239) to add subsidiaries and related entities of Quanta Display Inc. (“Quanta”), Seiko Epson Corporation (“Seiko Epson”), Fuji Photo Film Co., Ltd. (“Fuji”), Wintek Corp. (“Wintek”), and Toppoly Optoelectronics Corp. (“Toppoly”) as parties and to clarify language regarding Honeywell’s intent to seek an accounting. During discovery, many defendants have identified related entities that are involved in some way with the infringing activity that is the subject of this action. Consequently, each entity that Honeywell proposes to add is: (1) related to a named defendant; and (2) identified by a named defendant as a related entity involved in the manufacture, sale,

and/or distribution of LCD modules that are the subject of this litigation. None of these amendments represent an expansion of this litigation, and Honeywell has sought to avoid naming these parties in the Second Amended Complaint by working with defendants to secure adequate assurances that Honeywell's interests in having the appropriate parties in the case and having access to necessary discovery would be protected. While Honeywell received such assurances from many defendants, some have refused, necessitating the present motion and Second Amended Complaint.

Specifically, Tech-Well is a subsidiary of Quanta that is involved in manufacturing LCD modules for Quanta. United Win (China) Technology Ltd. and Dongguan Masstop Liquid Crystal Display Co., Ltd. are subsidiaries of Wintek that manufacture LCD modules. Toppoly Nanjing is a subsidiary of Toppoly that manufactures LCD modules. Suzhou Epson Co., Ltd., Sanyo Epson Imaging Devices (Hong Kong) Ltd., and Sanyo Epson Imaging Devices (Philippines) Inc., are affiliated entities of Seiko Epson that manufacture modules. Epson Europe Electronics GmbH and Epson Hong Kong Ltd. are affiliated entities of Seiko Epson that sell and distribute LCD modules. Fujifilm Photonix Co., Ltd. is a subsidiary of Fuji that manufactures modules.

The amended language regarding an accounting is merely a clarification of language already included in Honeywell's original complaint. Honeywell believes that with the language regarding "account for," we have sufficiently pled a request for an accounting, but in order to make sure there is not confusion, we have clarified the language to ensure notice to all defendants.

Rule 15 provides, in pertinent part, that after a responsive pleading has been filed, a party may amend its pleadings "by leave of court or by written consent of the adverse party; and leave

shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a). Unless the opposing party can show undue delay, bad faith or dilatory motive on the part of the movant, or undue prejudice to the opposing party, a court should freely grant leave to file the amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Mylan Pharm., Inc. v. Kremers Urban Dev.*, No. 02-1628 (GMS), 2003 U.S. Dist. LEXIS 20665, at \*6 (D. Del. Nov. 14, 2003); *France Telecom S.A. v. Novell, Inc.*, No. 02-437-GMS, 2002 U.S. Dist. LEXIS 19967, at \*2-\*3 (D. Del. Oct. 17, 2002).<sup>1</sup>

Honeywell’s motion to amend its First Amended Complaint is timely, brought in good faith, and will not delay the proceedings or unfairly prejudice any defendant. By stipulation of the parties and with the approval of the Court, the Scheduling Order governing the proceedings in this matter was amended to set July 28, 2006, as the deadline to add parties and to amend the pleadings (D.I. 480). Thus, there is no question that Honeywell’s present motion is timely.

In addition, Honeywell’s Second Amended Complaint is brought in good faith and without any dilatory motive. Each of the proposed additional entities has been identified by a named defendant as a related entity that is involved in the manufacture, sale and/or distribution of the LCD modules accused of infringement. In order to avoid adding new parties and yet ensure both that the right parties are in the case and that Honeywell would be able to secure appropriate discovery, Honeywell endeavored to obtain assurances from defendants as to their willingness to stand in for the related entities. Because the defendants identified above refused to provide these assurances as to their respective related entities, the Second Amended Complaint is the only way that Honeywell can be sure that the right parties are in the case and that discovery regarding infringing modules can proceed expeditiously.

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<sup>1</sup> All unreported opinions are attached hereto as Exhibit C.

Moreover, the addition of these related entities as parties will not unduly delay the present proceedings. As each entity is a related party of a named defendant, and in fact identified by a named defendant, knowledge of Honeywell's allegations cannot possibly be a surprise. As well, while the relevant defendants presumably have access to the discovery required in the present litigation, the addition of these specific entities acts as important insurance that the discovery will be had efficiently and without technical obstacles.

Lastly, Honeywell's Second Amended complaint does not unfairly prejudice the defendants. As stated above, in each instance defendants are related to the proposed additional entities that, according to the defendants' own discovery responses, are involved in the manufacture, sale and/or distribution of LCD modules that Honeywell has accused of infringement. Due to these entities' involvement in the acts accused of infringing Honeywell's patent claims, and the defendants' unwillingness to provide assurances that they will stand in for these entities, the additional entities are appropriate and predictable parties to the action. Therefore, defendants cannot seriously contend that they would be unfairly prejudiced by the addition of their related entities as parties.

Similarly, defendants cannot contend that the clarifying language regarding an accounting would prejudice them in any way. Honeywell's original complaint laid claim to an accounting and the propose amendment merely clarifies this in light of Delaware's pleading conventions.

### **CONCLUSION**

In light of the foregoing, Honeywell submits that the Court should grant leave for Honeywell to file its Second Amended Complaint and respectfully requests that the Court ask the

current defendants to accept service of the Second Amended Complaint on behalf of their related entities.

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*/s/ Maria Granovsky*

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**RULE 7.1.1 CERTIFICATION**

I hereby certify that counsel for Honeywell International, Inc. has raised the subject of the foregoing motion with counsel for non-stayed defendants.

Counsel for defendant Samsung SDI does not oppose the motion.

Counsel for Sanyo Epson and Seiko Epson opposes the motion.

Counsel for Sony Corporation, Sony Corporation of America, ST Liquid Crystal Display, Quanta Display Inc., Arima Display Corporation, Matsushita Electrical Industrial Co., Matsushita Electrical Corporation of America, Optrex America, Inc., Fuji Photo Film Co., Ltd., Fuji Photo Film U.S.A., Inc., Casio Computer Co., Ltd., Citizen Watch Co., Ltd., Citizen Displays Co., Ltd., International Display Technology, International Display Technology USA, Inc., BOE Hydis Technology Co., Ltd., Hitachi Displays, Ltd., Toppoly Optoelectronics Corp., Koninklijke Philips Electronics N.V., Philips Electronics North America Corp., Wintek Corp., and Wintek Electro-Optics Corporation have not provided a response.

*/s/ Maria Granovsky*

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CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2006, I electronically filed the foregoing document with the Clerk of Court using CM/ECF, which will send notification of such filing to the following: John R. Alison, Parker H. Bagley, Robert J. Benson, Robert Karl Beste, III, Elizabeth L. Brann, Christopher E. Chalsen, Hua Chen, Jay C. Chiu, Arthur G. Connolly, III, Frederick L. Cottrell, III, Sang N. Dang, Francis DiGiovanni, Thomas M. Dunham, Kevin C. Ecker, Amy Elizabeth Evans, York M. Faulkner, Maxwell A. Fox, Terry D. Garnett, Christopher J. Gaspar, Alexander E. Gasser, Alan M. Grimaldi, Thomas C. Grimm, Thomas Lee Halkowski, Angie Hankins, Richard L. Horwitz, Dan C. Hu, John T. Johnson, Robert J. Katzenstein, Nelson M. Kee, Richard D. Kelly, Matthew W. King, Stephen S. Korniczky, Hamilton Loeb, Robert Maier, David J. Margules, David Ellis Moore, Carolyn E. Morris, Arthur I. Neustadt, Elizabeth A. Niemeyer, Kevin M. O'Brien, Andrew M. Ollis, Karen L. Pascale, Adam Wyatt Poff, Leslie A. Polizoti, Alana A. Prills, Steven J. Rizzi, Lawrence Rosenthal, Avelyn M. Ross, Philip A. Rovner, Diana M. Sangelli, Robert C. Scheinfeld, Carl E. Schlier, Chad Michael Shandler, John W. Shaw, Matthew W. Siegal, Neil P. Sirota, Monte Terrell Squire, William J. Wade, Peter J. Wied, Roderick B. Williams, Vincent K. Yip, Edward R. Yoches.

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